

§ 11.1115 Information collection.

(a) The information collection requirements contained in § 11.600 and § 11.606 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned approval number 1076-0094. The information is being collected to obtain a marriage license (§ 11.600) and a divorce decree (§ 11.606) from the Courts of Indian Offenses, and will be used by the courts to issue a marriage license or divorce decree. Response to this request is required to obtain a benefit.

(b) Public reporting for this information collection is estimated to average .25 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information collection. Direct comments regarding the burden estimate or any other aspect of this information collection to the Bureau of Indian Affairs, Information Collection Clearance Officer, Room 336-SIB, 1849 C Street, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs [Project 1076-0094], Office of Management and Budget, Washington, DC 20502.

PART 12—THE INDIAN POLICE

Sec.

12.100 Superintendent in command.

12.101 Police commissioners.

12.102 Police training.

12.103 Minimum standards for police programs.

12.104 Minimum standards for detention programs.

12.105 Return of equipment.

AUTHORITY: 25 U.S.C. 2, 13.

SOURCE: 22 FR 10515, Dec. 24, 1957. Redesignated at 58 FR 54411, Oct. 21, 1993.

§ 12.100 Superintendent in command.

The superintendent of each Indian reservation shall be recognized as commander of the Indian police force and will be held responsible for the general efficiency and conduct of the members thereof. It shall be the duty of the superintendent, or his duly qualified representative, to keep himself informed as to the efficiency of the Indian police in the discharge of their duties, to subject them to a regular inspection, to

inform them as to their duties and keep a strict accounting of the equipment issued them in connection with their official duties. It shall be the duty of the superintendent to detail such Indian policemen as may be necessary to carry out the orders of the Court of Indian Offenses and to preserve order during the court sessions. The superintendent shall investigate all reports and charges of misconduct on the part of Indian policemen and shall exercise such proper disciplinary measures as may be consistent with existing regulations. No superintendent of any Indian reservation shall assign or detail any member of the Indian police force for duty as janitor or chauffeur or for any duty not connected with the administration of law and order.

§ 12.101 Police commissioners.

The superintendent of any Indian reservation may, with the approval of the Commissioner of Indian Affairs, designate as police commissioner any qualified person. Wherever any special or deputy special officer is regularly employed in any Indian jurisdiction, he shall be police commissioner for that jurisdiction. Such police commissioner shall obey the orders of the superintendent of the reservation where employed and shall see that the orders of the Court of Indian Offenses are properly carried out. The police commissioner shall be responsible to the superintendent for the conduct and efficiency of the Indian police under his direction and shall give such instruction and advice to them as may be necessary. The police commissioner shall also report to the superintendent all violations of law or regulation and any misconduct of any member of the Indian police.

§ 12.102 Police training.

It shall be the duty of the superintendent to maintain from time to time as circumstances require and permit classes of instruction for the Indian policemen. Such classes shall familiarize the policemen with the manner of making searches and arrests, the proper and humane handling of prisoners, the keeping of records of offenses and police activities, and with court orders and legal forms and the

duties of the police in relation thereto, and other subjects of importance for efficient police duty. It shall further be the purpose of the classes to consider methods of preventing crime and of securing cooperation with Indian communities in establishing better social relations.

§ 12.103 Minimum standards for police programs.

The following minimum standards are required of all law enforcement programs that receive funding from the Bureau of Indian Affairs:

(a) Each law enforcement officer shall be specifically identified as such and shall be individually authorized to make arrests and carry firearms. Only employees assigned duties as law enforcement officers and qualified under paragraph (e) of this section may be authorized to carry firearms or make arrests.

(b) Uniforms, when worn, shall positively identify the wearer as a law enforcement officer. Badge, name plate and tribal or Bureau of Indian Affairs patch shall be visible at all times. Uniforms of all enforcement personnel shall be plainly distinguishable from the uniforms of any non-enforcement personnel working on the reservation. Each officer shall be issued a standard identification card bearing a photograph of the officer.

(c) A firearm may be discharged only when in the considered judgment of the officer there is imminent danger of loss of life or serious bodily injury to the officer or to another person. The weapon may be fired only for the purpose of rendering the person at whom it is fired incapable of continuing the activity prompting the officer to shoot. The firing of warning shots is prohibited. This policy does not apply to the use of firearms to participate in official marksmanship training or to kill a dangerous or seriously injured animal.

(d) Except in firearms training, each time a firearm is used for law enforcement purposes a report shall be filed with the superior of the officer who used the weapon. Whenever use of a weapon results in serious injury or death of any person, the officer firing the weapon shall be placed on administrative leave, or be assigned to strictly

administrative duties pending a thorough investigation of all circumstances surrounding the incident.

(e) Each law enforcement officer must have attained a score of 70 percent or better on an approved firearms qualification course within the previous six months to be qualified to carry a firearm. Whenever an officer's firearms qualification lapses, the officer shall return all weapons issued. The following courses are approved firearms qualification courses:

(1) The National Rifle Association National Police Course.

(2) The National Rifle Association 25-Yard Course.

(3) The National Rifle Association Practical Pistol Course.

(4) The Federal Bureau of Investigation Practical Pistol Course.

(f)(1) Law enforcement officers shall be issued the standard police .38 caliber revolver and ammunition. The use of other types of hand guns such as automatics, parabellums, or calibers other than the authorized .38 caliber is prohibited. The barrel length may be not more than 6 inches nor less than 4 inches for uniformed personnel, and not less than 2 inches for plainclothes personnel. Only standard load ammunition may be used. Bureau of Indian Affairs officers who carried a .357 Magnum revolver while performing law enforcement functions for the Bureau of Indian Affairs before July 17, 1972, may be authorized to carry a .357 Magnum revolver. The Commissioner of Indian Affairs may grant a written waiver to permit Bureau of Indian Affairs officers to carry hand guns not authorized by this paragraph.

(2) Each tribe shall specify the type of firearms, ammunition and auxiliary equipment to be used by the law enforcement officers of that tribe.

(g)(1) Newly employed patrol officers shall successfully complete within their first year of service the approved Basic Police Training Course conducted at the Indian Police Academy or a similar course substantially meeting or exceeding the level of training provided by the Indian Police Academy and approved by the Commissioner of Indian Affairs. An officer who fails to complete the training required by this

paragraph shall be discharged or transferred to a position not involving law enforcement duties. Transfer may result in demotion.

(2) Prior to, or within one year after, promotion or appointment to a supervisory enforcement position, an employee shall complete the approved Supervisory Enforcement Officer Training Course conducted at the Indian Police Academy or a similar course substantially meeting or exceeding the level of training provided by the Indian Police Academy and approved by the Commissioner of Indian Affairs. An officer who is serving in a supervisory position and fails to complete the training required in this paragraph shall be transferred to a non-supervisory position. Transfer may result in demotion.

(3) Prior to, or within one year after, promotion or appointment to a criminal-investigator position, an officer shall successfully complete the Criminal-Investigator Training Course conducted at the Indian Police Academy or a similar course substantially meeting or exceeding the level of training provided by the Indian Police Academy and approved by the Commissioner of Indian Affairs. An officer who is serving in a criminal-investigator position and fails to complete the training required in this paragraph shall be transferred to a noncriminal-investigator position. Transfer may result in demotion.

(4) Prior to, or within one year after, promotion or appointment to a supervisory criminal-investigator position, an officer shall successfully complete the Executive Management Course of Training conducted at the Indian Police Academy or a similar course substantially meeting or exceeding the level of training provided by the Indian Police Academy approved by the Commissioner of Indian Affairs. An Officer who is serving in a supervisory criminal-investigator position and fails to complete the training required in this paragraph shall be transferred to a nonsupervisory criminal-investigator position. Transfer may result in demotion.

(h) Each law enforcement officer shall receive a minimum of forty hours of local in-service training annually to

meet training needs determined by the tribe and to keep abreast with developments in the field of law enforcement.

(i) The Civil Service Commission accepted Bureau of Indian Affairs standards for skill level GS-083 are the minimum entry level qualifications for a patrol officer. The Civil Service Commission standards for skill level GS-1811 are the minimum entry level qualifications for criminal investigators. The standards are available for inspection or copying at any Bureau, Agency, Area, or Central Personnel Office.

(j) Salaries paid law enforcement officers by a tribal organization under a contract under part 271 of this chapter or by a tribal governing body under a grant under part 272 of this chapter shall be equal to or greater than the salaries paid officers with similar responsibilities employed directly by the Bureau of Indian Affairs.

(k) Prior to taking an adverse action against any employee, the contractor under part 271 of this chapter or grantee under part 272 of this chapter shall take the following steps:

(1) Notify the employee of the contemplated action and give a full specification of the reasons such action is contemplated.

(2) Provide the employee with a written statement of any specific violation of rules, regulations, or statutes the contractor or grantee alleges the employee has committed and the names of all persons upon whose testimony these allegations are based.

(3) Set a hearing date not less than 15 days after the employee has been given the written statement of allegation.

(4) Provide the employee and the employee's counsel at the hearing with an opportunity to confront and cross-examine each adverse witness.

(5) Provide the employee and the employee's counsel at the hearing with an opportunity to delineate issues, to present factual contentions in an orderly manner and to generally protect the employee's interest.

(6) Reconsider the decision to take the adverse action based solely on the evidence given at the hearing and provide the employee at the time the decision is announced with a written statement of the reasons for the decision

and the evidence relied upon in reaching the decision.

(7) Issue a final order based on the decision reached after the hearing.

(l) After October 1, 1977, the tribe shall require each law enforcement officer it employs to adhere to a law enforcement code of conduct prescribed by the tribe. The code shall establish specific rules concerning conflicts of interest, employee conduct both on and off duty, impartiality and thoroughness in performance of duty, and acceptance of gifts or favors.

(m) A contractor under part 271 of this chapter shall use the same report forms and submit the same statistical reports to the Central Office that are required of Bureau of Indian Affairs police programs.

(n)(1) When a law enforcement officer receives an oral or written allegation that a law enforcement officer employed by a program funded by the Bureau of Indian Affairs has violated the civil rights of any person, the officer receiving the allegation shall prepare a written report of the allegation and transmit it through the chain of command to the chief law enforcement officer within seven days of receipt of the allegation.

(2) Not later than seven days after being notified of the allegation, the chief law enforcement officer shall take the following actions:

(i) Notify the Federal Bureau of Investigation, the agency superintendent or contracting officer's representative, and the tribal council. The notice to the Federal Bureau of Investigation shall state whether an investigation is being conducted to determine whether tribal law was violated and shall cite any relevant provisions of the tribal code.

(ii) If the officer against whom the allegation is made is an employee of the Bureau of Indian Affairs, prepare a memorandum to the superintendent, who shall, through the area director and the Assistant Secretary—Indian Affairs, transmit to the Director, Office of Audit and Investigation, a request that the allegation be investigated to determine whether any administrative action is warranted. The memorandum shall be transmitted through the superintendent and the

area director. The tribal council shall receive a copy of any such memorandum.

(iii) If the officer against whom the allegation is made is an employee of a tribal contractor, notify both the top Bureau of Indian Affairs law enforcement officer assigned to the agency and the tribal council. If there is no Bureau of Indian Affairs law enforcement officer at the agency, the superintendent and the area special officer shall be notified.

(3) If the chief law enforcement officer is accused of a civil rights violation, the report of the allegation shall be transmitted directly to the agency superintendent, who shall take the actions required by paragraph (n)(2) of this section. If there is no agency superintendent, the report of the allegation shall be transmitted directly to the area director, who shall take the actions required by paragraph (n)(2) of this section.

(4) As soon as all actions required by paragraphs (n) (1), (2), and (3) of this section have been completed, a copy of all documents concerning the allegation shall be transmitted to the Chief, Division of Law Enforcement Services, in the Central Office.

(5 U.S.C. 301, 25 U.S.C. 2, 450m)

[41 FR 47234, Oct. 28, 1976; 41 FR 51012, Nov. 19, 1976, as amended at 42 FR 46518, Sept. 16, 1977; 43 FR 16973, Apr. 12, 1978]

§ 12.104 Minimum standards for detention programs.

Each detention program that receives funds from the Bureau of Indian Affairs shall meet the following minimum standards:

(a) No sick or injured person may be booked or held in a detention facility unless a medical release has been obtained from a medical officer.

(b) Any inmate requiring medical attention shall be treated as soon as possible.

(c) The jailor or other responsible employee shall maintain control over the custody and issue of all medicine to prisoners under treatment for chronic ailments to insure proper use and to guard against overdose.

(d) Routine inspections of all cells shall be conducted every thirty (30)

minutes to protect the safety and welfare of prisoners. A record of each inspection shall be logged in appropriate records.

(e) Only persons who have been specifically authorized by the jailor to visit a prisoner or prisoners may be allowed in the cell block areas.

(f) Special attention shall be given to cells occupied by persons jailed for intoxication to guard against the infliction of personal injury.

(g) No juvenile may be kept in the same cell with any adult.

(h) Each prisoner shall be served three nutritionally adequate meals a day.

(i) Each foodhandler shall be given a medical examination and, if training in foodhandling is available locally from the Indian Health Service, shall complete the foodhandler training offered by the Indian Health Service prior to employment.

(j) All jail facilities including kitchens shall be subject to periodic inspections by personnel from the Indian Health Service or other appropriate agency to insure proper sanitary conditions.

(k) The number of persons in each cell may not exceed the number for which the cell was designed.

(l) A record of all visitors shall be maintained indicating date, time and identity of each visitor.

(m) Proper precautions shall be taken to insure the safekeeping of property belonging to inmates.

(n) Prior to, or within six months after, promotion or appointment to a position involving detention/jail duties, an employee shall successfully complete a Detention/Jail Operations and Management Training Course approved by the Commissioner of Indian Affairs. An employee who is serving in a position involving detention/jail duties and fails to complete the training required by this paragraph shall be transferred to a position not involving detention/jail or law enforcement duties or discharged. Transfer may result in demotion.

(5 U.S.C. 301, 25 U.S.C. 2, 450k)

[41 FR 47235, Oct. 28, 1976, as amended at 42 FR 46518, Sept. 16, 1977]

§ 12.105 Return of equipment.

Upon the resignation, death or discharge of any member of the Indian police all articles or property issued him in connection with his official duties must be returned to the superintendent or his representative.

PART 13—TRIBAL REASSUMPTION OF JURISDICTION OVER CHILD CUSTODY PROCEEDINGS

Subpart A—Purpose

Sec.

13.1 Purpose.

13.2 Information collection.

Subpart B—Reassumption

13.11 Contents of reassumption petitions.

13.12 Criteria for approval of reassumption petitions.

13.13 Technical assistance prior to petitioning.

13.14 Secretarial review procedure.

13.15 Administrative appeals.

13.16 Technical assistance after disapproval.

AUTHORITY: 25 U.S.C. 1952.

SOURCE: 44 FR 45095, July 31, 1979, unless otherwise noted.

Subpart A—Purpose

§ 13.1 Purpose.

(a) The regulations of this part establish the procedures by which an Indian tribe that occupies a reservation as defined in 25 U.S.C. 1903(10) over which a state asserts any jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588) Pub. L. 83-280, or pursuant to any other federal law (including any special federal law applicable only to a tribe or tribes in Oklahoma), may reassume jurisdiction over Indian child custody proceedings as authorized by the Indian Child Welfare Act, Pub. L. 95-608, 92 Stat. 3069, 25 U.S.C. 1918.

(b) On some reservations there are disputes concerning whether certain federal statutes have subjected Indian child custody proceedings to state jurisdiction or whether any such jurisdiction conferred on a state is exclusive of tribal jurisdiction. Tribes located on those reservations may wish to exercise exclusive jurisdiction or other jurisdiction currently exercised by the